

1 REBECCA WILLIFORD (CA BAR NO. 269977)  
([rwilliford@dralegal.org](mailto:rwilliford@dralegal.org))

2 JINNY KIM (CA BAR NO. 208953)  
([jkim@dralegal.org](mailto:jkim@dralegal.org))

3 MELISSA RIESS (CA BAR NO. 295959)  
([mriess@dralegal.org](mailto:mriess@dralegal.org))

4 DISABILITY RIGHTS ADVOCATES  
2001 Center Street, Third Floor  
5 Berkeley, California 94704-1204  
Telephone: (510) 665-8644  
6 Facsimile: (510) 665-8511

7 CHRISTOPHER HO (CA BAR NO. 129845)  
([cho@legalaidatwork.org](mailto:cho@legalaidatwork.org))

8 LEGAL AID AT WORK  
180 Montgomery Street, Suite 600  
9 San Francisco, California 94104  
Telephone: (415) 864-8848  
10 Facsimile: (415) 593-0096

11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 SENIOR AND DISABILITY ACTION, on  
behalf of its members and all others similarly  
15 situated; INDEPENDENT LIVING  
RESOURCE CENTER OF SAN  
16 FRANCISCO; PI RA, on behalf of himself  
and all others similarly situated; and IAN  
17 SMITH, on behalf of himself and all others  
similarly situated,

18 Plaintiffs,

19 v.

20 SAN FRANCISCO BAY AREA RAPID  
21 TRANSIT DISTRICT and ROBERT M.  
POWERS, in his official capacity as General  
22 Manager of the San Francisco Bay Area Rapid  
Transit District,

23 Defendants.

Case No. 3:17-cv-01876-LB

**NOTICE OF JOINT MOTION AND  
MOTION FOR ORDER:**

- (1) GRANTING PRELIMINARY  
APPROVAL OF SETTLEMENT;  
(2) GRANTING CERTIFICATION OF  
SETTLEMENT CLASS;  
(3) DIRECTING NOTICE TO THE  
CLASS; AND  
(4) SETTING DATE FOR FAIRNESS  
HEARING

**AND MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Judge: Hon. Magistrate Laurel Beeler  
Date: November 30, 2023  
Time: 9:30 AM  
Courtroom: Zoom

1 CLEMENT L. GLYNN (CA BAR NO. 57117)  
([cglynn@glynnfinley.com](mailto:cglynn@glynnfinley.com))  
2 VICTORIA R. NUETZEL (CA BAR NO. 115124)  
([vnuetze@bart.gov](mailto:vnuetze@bart.gov))  
3 JONATHAN A. ELDREDGE (CA BAR NO. 238559)  
([jeldredge@glynnfinley.com](mailto:jeldredge@glynnfinley.com))  
4 GLYNN & FINLEY, LLP  
One Walnut Creek Center  
5 100 Pringle Avenue, Suite 500  
Walnut Creek, CA 94596  
6 Tel: (925) 210-2800  
Fax: (925) 945-1975

7  
8 *Attorneys for Defendants*  
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DISABILITY RIGHTS ADVOCATES  
2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT ON November 30, 2023 at 9:30 a.m. or at such other date and time as the Court may set, Plaintiffs Senior and Disability Action, Independent Living Resource Center of San Francisco, Pi Ra, and Ian Smith, and Defendants San Francisco Bay Area Rapid Transit District and its General Manager (hereafter, “the Parties”), will jointly move the Court for relief as follows:

1. To preliminarily approve the Settlement Agreement and Release of Claims (“the Agreement”) between Plaintiffs and Defendants San Francisco Bay Area Rapid Transit District and its General Manager;
2. To certify under Fed. R. Civ. P. 23(a) & (b)(2), for settlement purposes only, a settlement class defined as follows:

All people with Mobility Disabilities who, at any time between April 5, 2014, and the end of this Settlement’s Term, have needed to use or will need to use the Accessible Features of BART’s facilities.

3. To approve the proposed notice to be distributed to class members under Fed. R. Civ. P. 23(c)(2) and (e)(1); and
4. To set a fairness hearing consistent with the time frame set forth in this Motion, and to enjoin class members from asserting or maintaining any claims to be released by the Agreement pending the fairness hearing.

The hearing on this motion will take place before United States District Magistrate Judge Laurel Beeler and will be conducted via Zoom (the login information for which can be found on the Court’s website at <https://www.cand.uscourts.gov/judges/beeler-laurel-lb/>).

This motion is based on this Joint Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Jinny Kim in Support of the Joint Motion for Preliminary Approval of the Settlement Agreement, the Declaration of Christopher Ho in Support of Joint Motion for Preliminary Approval of the Settlement Agreement, the Declaration of Betty Traynor in Support of Joint Motion for Preliminary Approval of the

1 Settlement Agreement, the Declaration of Lana Nieves in Support of Joint Motion for  
2 Preliminary Approval of the Settlement Agreement, the Declaration of Pi Ra in Support of Joint  
3 Motion for Preliminary Approval of the Settlement Agreement, the Declaration of Ian Smith in  
4 Support of Joint Motion for Preliminary Approval of the Settlement Agreement, the pleadings  
5 and papers on file in this action, and any oral argument that may be presented.  
6  
7

8 DATED: October 20, 2023

Respectfully Submitted,

9  
10 DISABILITY RIGHTS ADVOCATES

11 /s/ Jinny Kim

12 \_\_\_\_\_  
Jinny Kim  
Melissa Riess  
Attorneys for Plaintiffs

14 GLYNN, FINLEY, MORTL, HANLON &  
15 FRIEDENBERG, LLP

16 /s/ Jonathan Eldredge

17 \_\_\_\_\_  
Jonathan Eldredge  
Attorneys for Defendants  
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2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644

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 2001 CENTER STREET, FOURTH FLOOR  
 BERKELEY, CALIFORNIA 94704-1204  
 (510) 665-8644

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This lawsuit and the proposed Class Settlement Agreement (“Agreement”) address Plaintiffs’ allegations of discrimination against people with mobility disabilities who use wheelchairs, walkers, and other mobility aids, and who rely on elevators or escalators to access the stations and services of the San Francisco Bay Area Rapid Transit District (“BART”). The Agreement provides for significant injunctive relief that will improve BART’s accessibility for riders with mobility disabilities. Among other things, BART has agreed to use its best efforts to renovate elevators and escalators and will make prompt repairs of out of service station elevators and escalators and will implement preventative maintenance plans to provide continuous, uninterrupted service. The Parties also agreed to emergency evacuation procedures and a protocol for passengers who are separated from their mobility devices during an emergency. In addition, the proposed settlement calls for training of BART personnel, and includes effective reporting, monitoring and dispute resolution mechanisms.

The Agreement is the product of over six years of thorough arm’s length negotiations, including multiple settlement meetings, nine settlement conferences, and exchange of information and numerous proposals since August 2017.

The Agreement is fair, adequate and reasonable, and satisfies all of the criteria for preliminary settlement approval under Rule 23 of the Federal Rules of Civil Procedure. Accordingly, the Parties respectfully request that the Court: (1) preliminarily approve the settlement; (2) certify the proposed settlement class and appoint the named Plaintiffs as class representatives and Plaintiffs’ attorneys as class counsel; (3) approve the Parties’ proposed form of notice and distribution plan; and (4) set deadlines for notice, objections, and a final fairness hearing.

**II. BACKGROUND AND PROCEDURAL HISTORY**

**A. Procedural History**

On April 5, 2017, Plaintiffs filed a class action complaint for declaratory and injunctive relief for full and equal access to BART’s stations and services. Dkt No. 1. The complaint

1 asserted claims arising under Title II of the Americans with Disabilities Act, Section 504 of the  
 2 Rehabilitation Act, the California Unruh Civil Rights Act, and California Government Code §  
 3 11135. *Id.* ¶¶ 94-152. On May 10, 2017, the Defendants answered the complaint. Dkt No. 20.

#### 4 **B. History of Settlement Negotiations**

5 On August 22, 2017, the Parties were referred to a settlement conference with Judge  
 6 Beeler. Declaration of Jinny Kim in Support of Joint Motion for Preliminary Approval of the  
 7 Settlement Agreement (“Kim Decl.”) ¶ 8. The Parties, along with named Plaintiffs and BART’s  
 8 representatives, first met with Magistrate Judge Beeler on September 12, 2017. Dkt No. 41.  
 9 Thereafter, the Parties attended formal settlement conferences on December 15, 2017, April 3,  
 10 2018, August 8, 2018, July 1, 2020, July 22, 2020, April 15, 2021, May 22, 2023 and July 12,  
 11 2023. Dkt Nos. 48, 54, 59, 99, 103, 115, 136 and 140. Between settlement conferences, the  
 12 parties met in-person, over Zoom and over conference calls to discuss settlement provisions and  
 13 exchanged numerous settlement drafts. Kim Decl. ¶ 10.

### 14 **III. SUMMARY OF PROPOSED SETTLEMENT**

15 The proposed settlement, attached as Exhibit 1 to the Declaration of Jinny Kim (“Kim  
 16 Decl.”), includes the following terms which were agreed to by the Parties.

#### 17 **A. Certification of the Settlement Class**

18 The Parties stipulate to a settlement class for injunctive relief under Rules 23(a) & (b)(2)  
 19 of the Federal Rules of Civil Procedure, defined as:

20 All people with Mobility Disabilities who, at any time between April 5, 2014 and the end  
 21 of this Settlement’s Term, have needed to use or will need to use the Accessible Features of  
 22 BART’s facilities.” Kim Decl., Ex. 1 at 5. As a practical matter, the settlement class does not  
 23 expand the class membership or legal claims previously certified by the Court, but rather  
 24 clarifies the class definition. As a Rule 23(b)(2) class, no class member may opt out of any  
 25 provisions of the Settlement. *See* Kim Decl., Ex. 1 at ¶ 13.

26 ///

27 ///

28 ///

**B. Injunctive Relief**

**1. Elevator and Escalator Repairs and Maintenance**

BART will implement a Strategic Maintenance Plan to renovate the 87 station elevators. *Id.* at ¶¶ 23-27. The Strategic Maintenance Plan is attached to the Agreement as Exhibit D and is fully incorporated by reference into the Agreement. *Id.* at ¶ 23. The Strategic Maintenance Plan identifies 40 elevators most in need of renovation, which BART will renovate within 15 years of the Delayed Implementation Date.<sup>1</sup> *Id.* at ¶¶ 24-25. After renovation of the initial 40 elevators, BART will make “Reasonable Best Efforts”<sup>2</sup> to renovate additional elevators each year until all elevators in need of renovation have been completed. *Id.* at ¶ 26. BART will also make prompt repairs of out of service station elevators. *Id.* at ¶ 27.

BART will implement an elevator preventative maintenance plan to provide continuous, uninterrupted elevator service during all passenger service hours, including scheduling maintenance work when trains are not in service. *Id.* at ¶¶ 28-31.

BART will implement an escalator repair plan to replace or “truss up” 40 downtown San Francisco station escalators and add one additional escalator and will use Reasonable Best Efforts to renovate all 40 of these escalators within 10 years of the Delayed Implementation Date. *Id.* at ¶¶ 32-33 and Exhibit F to Settlement Agreement. The plan has identified 38 escalators in Downtown Oakland and San Francisco and 96 additional escalators to be renovated in the future if funding becomes available. *Id.* at ¶¶ 32, 34. BART will prioritize critical systems and elevator renovations and repairs over escalators. *Id.* BART will make prompt

<sup>1</sup> The Parties agreed to a Delayed Implementation Date to allow BART additional time to meet certain terms of the Agreement, due to funding and other difficulties associated with the COVID-19 pandemic. The Delayed Implementation Date will be the earlier of: (1) 90 days after BART ridership reaches 75% of its historic average (based on Fiscal Year 2020 from the Short Range Transit Plan (i.e., 2.43 million paid exits per week)) for four weeks in a row; or (2) June 1, 2024. Kim Decl., Ex. 1 at 2 (“Delayed Implementation Date”).

<sup>2</sup> As defined in the Agreement, “Reasonable Best Efforts” means efforts that are reasonable under the circumstances taking into account BART’s status as a publicly-funded government entity and the interests of Plaintiffs and the Settlement Class. “Reasonable Best Efforts” shall not require BART to engage in actions that would result in a fundamental alteration in the nature of its services, programs, or activities, or that would impose undue financial or administrative burdens. Kim Decl., Ex. 1 at 4 (“Reasonable Best Efforts”).

repairs to out of service station escalators. *Id.* at ¶ 35.

BART has implemented an escalator preventative maintenance plan to provide continuous, uninterrupted escalator service in the daily commute direction during all passenger service hours. *Id.* at ¶¶ 36-38 and Exhibit I to Settlement Agreement.

## 2. Elevator and Station Cleanliness

In an effort to reduce elevator vandalism and soiling, BART will use Reasonable Best Efforts to fund a program to provide elevator attendants at Civic Center, Powell Street, Embarcadero, and Montgomery Street stations for the Settlement Term. *Id.* at ¶ 39.

BART has modified its staffing schedules for System Service Workers to ensure adequate personnel are available to respond promptly when Accessible Features<sup>3</sup> have been soiled. *Id.* at ¶ 41 and Exhibit H of Settlement Agreement. The changed staffing schedules are subject to arbitration of a labor grievance. *Id.* The staffing schedule provides for timely response to instances of soiling Accessible Features and prioritizes staffing for high traffic stations. *Id.* at ¶¶ 44-45.

## 3. Outage Communication and Mitigation Plan

BART will make Reasonable Best Efforts to promptly (i.e., within 15 minutes of notification of an outage report) communicate elevator and escalator outages to the public through a variety of media, including BART's email subscription, BART's on-demand text messages, and BART's website. *Id.* at ¶ 48. BART will continue to update its elevator hotline hourly, ensure that hotline messages are time-stamped, update platform signs and station agent booths with elevator outages, and announce elevator outages on trains and at platforms at least once every fifteen minutes. *Id.* at ¶¶ 50, 51. BART will post signage on elevators and station agent booths at least one week before a planned elevator outage when the outage is known more than a week in advance; otherwise, BART will post signage as soon as reasonably possible. *Id.*

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<sup>3</sup> "Accessible Features" are "those features of San Francisco Bay Area Rapid Transit District ("BART")'s facilities that are required in order to make those facilities readily accessible to and usable by people with disabilities including (but not limited to) elevators, escalators, accessible fare gates, call boxes, communication systems, and signage." Kim Decl., Ex. 1 at 2 ("Accessible Features").

1 at ¶ 52. BART will promptly communicate escalator outages to the public via on-demand text  
2 messages and website postings. *Id.* at ¶ 53.

3 BART will disseminate and publicize its Access and Elevator Outage Mitigation Plan  
4 through standard methods including, but not limited to, email subscriptions, BART's website and  
5 BART's social media, and discussing the plan with the BART Accessibility Task Force. *Id.* at  
6 ¶¶ 54, 55, 56. This plan includes a guide which details mitigation options available when a given  
7 BART station elevator is out of service, and which will allow BART personnel to provide people  
8 with disabilities with accurate and detailed information on alternative options to reach their  
9 destination. *Id.* at ¶¶ 56-57.

10 BART will also use Reasonable Best Efforts to fund and implement an Elevator Helpline  
11 pilot to provide a telephone line staffed seven days a week during BART's hours of operation.  
12 *Id.* at ¶ 58. Helpline staff will provide riders with detailed information regarding alternative  
13 routes they can take due to station elevator outages, directions to transit or shuttle pickup  
14 locations, and assistance with scheduling on-demand shuttle pickup. *Id.* The Helpline number  
15 will be included in all elevator outage texts and announcements. *Id.* at ¶ 59.

16 If funding is obtained, the Elevator Helpline pilot will be implemented within four  
17 months and will include a testing period of three months and an additional six months based on  
18 the results of the testing period. BART will gather data regarding Helpline usage, efficacy, and  
19 customer satisfaction, which the Parties will review to determine whether the Helpline should be  
20 made permanent or modified (if funding is available) or ended. *Id.* at ¶ 60.

21 BART has developed a pilot program which will test the usage, reliability, and cost-  
22 effectiveness of on-demand and staged shuttle service. *Id.* at ¶ 61. Although BART does not  
23 currently have funding to implement the program, it will use Reasonable Best Efforts to seek  
24 funding for implementation. *Id.* The program will provide on-demand accessible vehicles  
25 during elevator outages at stations with the most limited mitigation alternatives. *Id.* at ¶¶ 62-69.  
26 The program will run for six months and be implemented six months after funding is acquired.  
27 *Id.* at ¶ 70.  
28

DISABILITY RIGHTS ADVOCATES  
2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644

#### 4. Emergency Preparedness Plan

BART will implement an emergency preparedness plan no later than the Delayed Implementation Date. *Id.* at ¶ 71. The plan includes seven elements: 1) emergency evacuation training for station agents and train operators; 2) inclusion of emergency evacuation procedures related to people with disabilities in BART's regular "toolbox" training of its police officers; 3) updates to BART's website and printed materials related to emergency evacuation procedures; 4) provision and maintenance of 40 "slings" to be used for evacuation of passengers who require physical assistance with evacuation; 5) inclusion of practice in the evacuation of persons with disabilities during BART's regular emergency evacuation drills; 6) implementation of Mobility Device Reunification practices; and 7) use of interactive display screens available on the Fleet of the Future BART cars to textually communicate emergency alerts that are otherwise being communicated audibly. *Id.* at ¶¶ 72-86.

#### 5. Accessibility Features Within BART Stations

BART will maintain call boxes in working condition in accordance with the OEM maintenance schedule. *Id.* at ¶ 87.

BART will solicit and consider comments from Class Counsel regarding any planned material changes to any aspect of a station's path of travel, to ensure that such changes do not inadvertently create access barriers for people with disabilities. *Id.* at ¶ 89. BART will make Reasonable Best Efforts to install Clipper pods and/or BART fare gates where elevators are located outside of the paid area in order to bring them inside of the paid area. *Id.* at ¶ 90. Where the platform elevator is located outside of the paid area, BART will install signage stating that passengers should make use of the service gate and describing the path to the platform and street elevators. *Id.* at ¶ 91. BART will work with staff and/or appropriate consultants, as needed, in implementing these improvements. *Id.* at ¶ 92.

BART will maintain accessible fare gates in working condition in accordance with the OEM maintenance schedule. *Id.* at ¶ 94. If an accessible fare gate is out of order, BART will make Reasonable Best Efforts to ensure the station agent is readily available to assist riders with

1 Mobility Disabilities in the tagging and processing of tickets. *Id.* at ¶ 95.

2 BART will ensure that Station Agents do not lock or turn off elevators during BART's  
3 operating hours, unless doing so is necessary to perform elevator maintenance or for some  
4 legitimate safety-related reason. *Id.* at ¶ 97. BART will ensure that swing gates adjacent to  
5 Station Agents' booths shall not be locked during BART's operating hours, unless a Station  
6 Agent is immediately adjacent to the gates and able to provide passenger assistance. *Id.* at ¶ 98.  
7 BART will also install signage at each swing gate that includes a wheelchair access icon and  
8 directs passengers to ask the Station Agent to unlock the gate as necessary. *Id.* BART will  
9 include these policies in Station Agent trainings and training materials within 90 days after the  
10 Effective Date. *Id.* at ¶ 99.

#### 11 6. Training of BART Personnel

12 BART will include 1) federal and state requirements regarding the accessibility of BART  
13 stations and service, and 2) disability etiquette, in training both existing and new BART  
14 employees involved in ensuring the accessibility of BART stations. *Id.* at ¶ 101. BART will  
15 continue to supervise and review the performance of all staff coming into direct contact with  
16 customers to ensure people with disabilities receive proper service. *Id.* at ¶ 102. BART will also  
17 employ available disciplinary procedures to ensure accountability of such employees, and each  
18 instance of the use of disciplinary procedures related to employee infractions of BART's  
19 accessibility policies will be recorded. *Id.*

20 The Settlement Agreement includes training requirements specific to BART Station  
21 Agents, Train Operators, System Service Workers, and Operation Control Center Workers. *Id.* at  
22 ¶¶ 103-106.

#### 23 7. Complaint Procedure

24 BART will implement and staff a phone line through which patrons can report  
25 accessibility problems or speak to a staff person who has training on accessibility within the  
26 BART system. *Id.* at ¶ 107. BART will update its website in relevant places to direct patrons  
27 with accessibility concerns to the phone line and an online complaint form. *Id.*



1           **C.     Monitoring**

2           BART will designate a “Point Person” to serve as an administrative liaison to Class  
3 Counsel for the purpose of compliance, reporting, and monitoring. *Id.* at ¶ 108. The Settlement  
4 Agreement sets forth a schedule for BART to provide progress reports to Class Counsel at least  
5 annually for the settlement term. *Id.* at ¶¶ 109-110.

6           The Parties will also meet annually for the first five years of the settlement term and as  
7 needed thereafter in order to discuss BART’s implementation of the settlement and any disputes  
8 related thereto. *Id.* at ¶ 112. BART will pay Class Counsel \$12,500 per year for years 1-5 of the  
9 settlement term, and \$10,000 per year for the remainder of the settlement term. Payment will be  
10 made annually on the anniversary of the Effective Date. *Id.* at ¶ 113.

11           **D.     Dispute Resolution Procedure**

12           The Parties request that Magistrate Judge Beeler retain jurisdiction to enforce the  
13 Settlement Agreement and mediate disputes throughout the Term. *Id.* at ¶ 8. The Parties have  
14 agreed to a four-stage procedure to resolve disputes concerning the interpretation,  
15 implementation, monitoring, compliance, and modification of the Settlement Agreement. *Id.* at ¶  
16 122. First, any Party notified of a dispute shall respond in writing and cure the alleged violation  
17 or failure to perform. *Id.* at ¶ 123. Second, if the alleging Party maintains that the violation or  
18 failure to perform has not been cured, the Parties shall meet and confer in order to attempt to  
19 resolve the dispute informally. *Id.* at ¶ 124. Third, if no resolution is reached, or if the Parties do  
20 not timely meet and confer, any Party may submit the dispute for mediation by Judge Beeler or  
21 another selected mediator. *Id.* at ¶ 125. Fourth, failing resolution through the above procedures,  
22 any Party may submit the dispute to Judge Beeler for decision. *Id.* at ¶ 126.

23           **E.     Service Awards to the Named Plaintiffs**

24           For services rendered on behalf of the settlement class, BART will pay \$7,500.00 each to  
25 the named individual Plaintiffs Pi Ra and Ian Smith and \$15,000.00 each to the organizational  
26 Plaintiffs, Senior and Disability Action and Independent Living Resource Center of San  
27 Francisco. *Id.* at ¶ 129. These service awards will not come out of any monies allocated for  
28



1 disability access improvements but will instead be paid separately by BART. Each of the named  
 2 Plaintiffs, and their representatives, participated in the investigation of this case and participated  
 3 in the negotiations that resulted in the proposed settlement. Kim Decl. ¶¶ 10, 16, 18.

4 **F. Released and Unreleased Claims**

5 The Settlement Class will release BART from all claims for injunctive relief that were or  
 6 could have been brought in this Action, including claims that may accrue during the Term of the  
 7 Settlement Agreement. *Id.* at ¶ 114. The release is binding upon the Settlement Class through  
 8 the Term of the Settlement Agreement, and any claims that accrue after the expiration of the  
 9 Term are not subject to this release. *Id.* at ¶¶ 115-116. The release does not apply to claims for  
 10 damages. *Id.* at ¶ 118.

11 **G. Reasonable Attorneys' Fees, Costs and Expenses**

12 The Parties attended a separate settlement conference in an effort to reach agreement as  
 13 to the amount of attorney's fees, costs and expenses to be paid by Defendants as part of the  
 14 settlement. Kim Decl. ¶ 21. This settlement conference took place in May 2023 after all  
 15 injunctive relief terms and an agreement on service payments was resolved. *Id.* at ¶ 14. The  
 16 proposed settlement provides that BART will pay Plaintiffs' Counsel \$825,000 for attorneys'  
 17 fees and costs through final approval. Kim Decl., Ex. 1 at ¶ 128. This amount is a significant  
 18 reduction of Class Counsel's lodestar. *See* Kim Decl. at ¶¶ 20, 21. Like the named Plaintiffs'  
 19 service awards, Plaintiffs' Counsel's attorneys' fees, expenses and costs will not be paid from  
 20 any monies allocated for disability access improvements, but will instead be paid separately by  
 21 BART. Subject to approval by the Court, BART will pay Plaintiffs' Counsel's fees and costs (as  
 22 agreed between the Parties) within 90 calendar days after the Effective Date. *Id.* at ¶ 128(c).  
 23 Plaintiffs' counsel will move for an award of reasonable attorneys' fees, costs and expenses  
 24 pursuant to Rule 23(h) on a schedule to be set by the Court. The Declaration of Jinny Kim and  
 25 the Declaration of Chris Ho accompanied herewith provides a discussion of Plaintiffs' Counsel's  
 26 lodestar, the work performed in this matter, the rates sought, and the costs and expenses incurred,  
 27 all of which Plaintiffs allege were reasonable and consistent with applicable legal standards. *See*  
 28

Kim Decl. at ¶¶ 6-14, 20-31; Declaration of Chris Ho in Support of Joint Motion for Preliminary Approval of Class Action Settlement (“Ho Decl.”) ¶¶ 4-14.

#### IV. LEGAL ARGUMENT

##### A. The Proposed Settlement Class Should be Certified.

##### 1. The Proposed Settlement Class Satisfies the Requirements of Rule 23(a)

The Parties have stipulated to seek certification of the following class, for the purposes of settlement only, pending final approval:

[A]ll people with Mobility Disabilities who, at any time between April 5, 2014 and the end of this Settlement’s Term, have needed to use or will need to use the Accessible Features of BART’s facilities.

This Settlement Class is slightly different from the class described in Plaintiffs’ Complaint,<sup>4</sup> but given the nature of the claims and the injunctive relief at issue, this difference is without effect.

As a practical matter, the Settlement Class does not expand the class membership or legal claims set forth in the Complaint but rather clarifies the class definition. As a Rule 23(b)(2) class, no class member may opt out of any provisions of the settlement. *See* Kim Decl., Ex. 1 at ¶ 13. The Settlement Class meets the requirements of Rules 23(a) and 23(b)(2) and should be certified.

##### a. *The Settlement Class is Sufficiently Numerous*

Numerosity is met if “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members....” *Cottle v. Plaid Inc.*, 340 F.R.D. 356, 370 (N.D. Cal. 2021) (quoting *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000)). A court may make common sense extrapolations from statistical data to support a finding that the class is sufficiently numerous that joinder would be impracticable. *Californians for Disability Rights, Inc. v. California Dep’t. of Transp.*, 249 F.R.D. 334, 347 (N.D. Cal. 2008).

<sup>4</sup> The class proposed in Plaintiffs’ Complaint was “all persons with mobility disabilities who have been and/or are being denied the right to full and equal access to and use and enjoyment of the BART fixed route system due to the access violations described herein. This includes individuals who use, have used, or who have attempted to use the BART fixed route system, as well as those who have been and/or being deterred from such use as a result of the violations alleged herein.” *See* Complaint, Dkt No. 1 at 19:20-25.

The settlement class here satisfies this requirement. According to the United States Census Bureau’s 2021 American Community Survey, roughly 7% of the United States population reports having a mobility disability that makes walking or climbing stairs either seriously difficult or impossible. Applying this prevalence rate to population numbers from the 2020 Census suggests that well over three hundred thousand class members reside within the three counties—Alameda, San Francisco, and Contra Costa—that the BART system serves. In addition, close to 1.5 million people with mobility disabilities visit the Bay Area each year for work and leisure, and many of these travelers either use the BART system, or would do so were they not deterred by its pervasive barriers to access. Thus, the class is sufficiently numerous.

***b. The Settlement Class Satisfies Commonality***

The “commonality” requirement of Rule 23(a)(2) is satisfied if the claims of Plaintiffs and the proposed class “‘depend upon a common contention’ that is . . . capable of classwide resolution” —meaning that “a determination of its truth or falsity will resolve an issue that is central to the validity of each one of the [class members’] claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). “Commonality is generally satisfied where . . . the lawsuit challenges system-wide practice or policy that affects all of the putative class members.” *Benitez v. W. Milling, LLC*, No. 1:18-cv-01484-SKO, 2020 WL 309200, at \*5 (E.D. Cal. Jan. 21, 2020) (internal quotation marks and citations omitted).

The commonality requirement is satisfied here because named Plaintiffs (or the persons they serve) and class members are all subject to the same system-wide policies and practices that they are challenging. Plaintiffs allege Defendants failed to maintain a transit system readily accessible to persons with mobility disabilities. *See* Complaint, Dkt No. 1 at ¶¶ 30, 109, 114, 137, 145. Thus, the same factual allegations form the basis of each class member’s claims and the legality of these policies and practices under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Unruh Act, and the California Government Code is a question capable of class-wide resolution. *See Castro v. Paragon Indus., Inc.*, No. 1:19-cv-00755-DAD-SKO, 2020 WL 1984240, at \*9 (E.D. Cal. Apr. 27, 2020) (finding commonality because

allegations that the employer’s systematic wage-keeping practices violated state wage-and-hour laws “form[ed] the basis of each [] plaintiff’s claims”); *Gray v. Golden Gate Nat’l Recreational Area*, 279 F.R.D. 501, 512 (N.D. Cal. 2011) (finding commonality where plaintiffs challenged “uniform policies and practices of failing to ensure” accessibility for people with disabilities). Additionally, because “the changes Plaintiffs seek are to Defendant’s system-wide policies and practices,” any injunctive and/or declaratory remedy would necessarily apply to the entire class. *See T.G. v. Kern County*, No. 1:18-cv-0257 JLT, 2019 WL 6529083, slip op. at \*13 (E.D. Cal. Dec. 4, 2019). Accordingly, commonality is satisfied because there is a “common contention” binding class members’ claims.

**c. Plaintiffs’ Claims are Typical of the Settlement Class**

The third element of Rule 23(a) requires that the claims of the representative parties are typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). “The requirement of typicality is not primarily concerned with whether each person in a proposed class suffers the same type of damages; rather, it is sufficient for typicality if the plaintiff endured a course of conduct directed against the class.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017). “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation and internal quotation marks omitted). Because typicality overlaps with commonality, a finding of commonality usually supports a finding of typicality. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) (commonality and typicality requirements “tend to merge”).

Here, named Plaintiffs (or the persons they serve) and all members of the class have suffered alleged injuries that are attributable to the same “course of conduct”: Defendant’s system-wide policies and practices involving accessibility to its fixed route system for persons with mobility disabilities. *See, e.g.*, Complaint, Dkt No. 1 at ¶¶ 47-84. These common injuries encompass the alleged denial of full and equal access to the BART system due to consistent

access barriers. Thus, typicality is established because the claims of each class member, named and unnamed, resulted from the same course of conduct. *See Just Film*, 847 F.3d at 1118 (“[I]t is sufficient for typicality if the plaintiff endured a course of conduct directed against the class.”).

***d. Plaintiffs and their Counsel Will Fairly and Adequately Protect the Interests of the Class***

In determining whether a class has been adequately represented by plaintiffs and counsel, courts examine whether 1) “named plaintiffs and their counsel have any conflicts of interest with other class members,” and 2) whether “the named plaintiffs and their counsel [will] prosecute the action vigorously on behalf of the class.” *Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1007 (9th Cir. 2018) (citation omitted); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); Fed. R. Civ. P. 23(a)(4), *overruled on other grounds by Wal-Mart Stores*, 564 U.S. 338.

Plaintiffs have no known conflicts with the proposed class and their interests are aligned with those of the other class members. Kim Decl. ¶ 19; Declaration of Betty Traynor in Support of Joint Motion for Preliminary Approval of Class Action Settlement (“Traynor Decl.”) ¶ 7; Declaration of Lana Nieves in Support of Joint Motion for Preliminary Approval of Class Action Settlement (“Nieves Decl.”) ¶ 5; Declaration of Pi Ra in Support of Joint Motion for Preliminary Approval of Class Action Settlement (“Ra Decl.”) ¶ 8; Declaration of Ian Smith in Support of Joint Motion for Preliminary Approval of Class Action Settlement (“Smith Decl.”) ¶ 8.

Plaintiffs (or the persons they serve) are directly affected by the policies and practices that they brought this case to change. Complaint, Dkt. No. 1 at ¶¶ 47-84; Traynor Decl. ¶¶ 5-6, 9; Nieves Decl. ¶¶ 3-4; Ra Decl. ¶ 5; Smith Decl. ¶¶ 3-5. They sought the same relief for themselves and the class: compelling Defendant to change its policies and practices to allow people with mobility disabilities to have full and equal use of the BART transit system. *See* Complaint, Dkt No. 1 at ¶¶ 48, 52; *T.G.*, 2019 WL 6529083, slip op. at 14 (finding that Plaintiffs will “fairly and adequately represent the interests of the class” where plaintiffs sought the same declaratory and injunctive relief for themselves and the class: changes to policies and practices in Defendant’s juvenile detention facilities). Plaintiffs’ decision to seek only declaratory and injunctive relief also weighs in their favor. *See Am. Council of the Blind v. Astrue*, No. C05-04696 WHA, 2008

WL 4279674, at \*6 (N.D. Cal. Sept. 11, 2008) (holding that where plaintiffs do not seek monetary damages, “[t]he potential for any conflict or collusion is...minimal”).

Plaintiffs Smith and Ra have also demonstrated a serious commitment to their roles as class representatives. Ra Decl. ¶¶ 6-8; Smith Decl. ¶¶ 2, 5. They have met with their attorneys, recorded their experiences with BART’s services and facilities in detail as it relates to their claims, participated actively in settlement negotiations, and are willing to continue to prosecute this action if necessary. Kim Decl. ¶¶ 16-18; Traynor Decl. ¶¶ 8-10; Nieves Decl. ¶¶ 6-7; Ra Decl. ¶¶ 9-12; Smith Decl. ¶¶ 2, 6-7, 9-10. Similarly, representatives from organizational Plaintiffs Independent Living Resource Center San Francisco and Senior and Disabled Action have dedicated substantial staff time to gathering information from their members and constituents, and participated actively in settlement negotiations on their behalf. Kim Decl. ¶¶ 16-18; Traynor Decl. ¶¶ 9-10; Nieves Decl. ¶¶ 7-8.

“Adequate representation of counsel is generally presumed in the absence of contrary evidence.” *Californians for Disability Rights*, 249 F.R.D. at 349 (citation omitted); see 1 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 3:72 (6th ed. 2022). Adequacy also depends on counsel’s qualifications. *Sali*, 909 F.3d at 1007. Disability Rights Advocates and Legal Aid at Work have zealously advocated for the class throughout litigation and settlement discussions. Both organizations have served as class counsel in numerous disability rights cases, many of which have resulted in settlements. Kim Decl. ¶¶ 27-31; Ho Decl. ¶ 9. Based on their collective years of experience litigating disability claims, the policy and practice changes and other provisions contained in the Agreement will ensure that Plaintiffs and the class have full and equal access to the BART transit system, making further litigation unnecessary. Kim Decl. ¶¶ 15, 32-34. Thus, the class representatives and Plaintiffs’ Counsel are adequate to represent the class.

## 2. The Proposed Settlement Class Satisfies Rule 23(b)(2)

A Rule 23(b)(2) class is appropriate if “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding



1 declaratory relief is appropriate responding to the class as a whole.” Fed. R. Civ. P. 23(b)(2).  
 2 This provision applies when “a single injunction or declaratory judgment would provide relief to  
 3 each member of the class.” *Wal-Mart Stores*, 564 U.S. at 360. The Rule 23(b)(2) requirement is  
 4 “unquestionably satisfied when members of a putative class seek uniform injunctive or  
 5 declaratory relief from policies or practices that are generally applicable to the class as a whole.”  
 6 *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014) (certifying (b)(2) class of prisoners  
 7 challenging defendant’s centralized policies and practices of “uniform and statewide application”  
 8 even where those practices “may not affect every member of the proposed class . . . in exactly  
 9 the same way”); Fed. R. Civ. P. 23(b)(2).

10 Certifying this class under Rule 23(b)(2) is appropriate because the injunctive and  
 11 declaratory relief provided for in the Settlement Agreement is responsive to each class member’s  
 12 claims regarding the accessibility of the BART transit system.

13 **B. The Court Should Preliminarily Approve the Parties’ Agreement**

14 Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action on  
 15 court approval, which is intended to ensure that the proposed settlement is “fair, adequate, and  
 16 free from collusion.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (citation and  
 17 internal quotation marks omitted); Fed. R. Civ. P. 23(e)(2). In determining whether to approve a  
 18 class settlement, the court looks to four factors: (1) whether the class was adequately  
 19 represented; (2) whether the proposed settlement was negotiated at arm’s length; (3) whether the  
 20 relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and  
 21 appeal, the terms of any proposed award of attorneys’ fees, and other factors; and (4) whether the  
 22 proposal treats class members equitably relative to one another, focusing on a “‘substantive’  
 23 review of the terms of the proposed settlement.” Fed. R. Civ. P. 23(e)(2)(A)-(D); *see also*  
 24 Advisory Committee Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2). At the preliminary  
 25 approval stage, the Parties must “show that the court will likely be able to” approve their  
 26 proposed settlement under the Rule 23(e)(2) factors. Fed. R. Civ. P. 23(e)(1)(B); *see also In re*  
 27 *MyFord Touch Consumer Litig.*, No. 13-cv-03072-EMC, 2019 WL 1411510, at \*4 (N.D. Cal.  
 28

1 Mar. 28, 2019).

2 1. Plaintiffs and Their Counsel Have Adequately Represented the Class

3 In determining whether a class has been adequately represented, courts consider the same  
4 “adequacy of representation” questions that are relevant to class certification. *See id.* at \*8;  
5 *Cottle*, 340 F.R.D. at 376. Therefore, for the reasons discussed in § IV(A)(1)(d) above, the Court  
6 should find that Plaintiffs and their counsel will fairly and adequately protect the interests of the  
7 class.

8 2. The Parties’ Agreement is the Product of Arms-Length Negotiations

9 Preliminary approval is appropriate when an agreement is the product of “serious,  
10 informed, non-collusive negotiations” conducted by experienced counsel over an “extended  
11 period of time.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal.  
12 2007); *see e.g., Hanlon*, 150 F.3d at 1027 (affirming approval of settlement after finding “no  
13 evidence to suggest that the settlement was negotiated in haste or in the absence of information  
14 illuminating the value of plaintiffs’ claims”). “The involvement of a neutral or court-affiliated  
15 mediator or facilitator in [] negotiations may bear on whether [the negotiations] were conducted  
16 in a manner that would protect and further the class interests.” Advisory Committee Notes to  
17 2018 Amendments, Fed. R. Civ. P. 23(e)(2).

18 The Parties’ proposed agreement is the product of six years of negotiations, including  
19 informal discovery consisting of almost 2,000 pages of documents and nine in-person or Zoom  
20 settlement conferences before Magistrate Judge Laurel Beeler. Dkt Nos. 41, 48, 54, 59, 99, 103,  
21 115, 136, 140 (Minute Entries re Settlement Conferences); Kim Decl. ¶¶ 9-10. The Parties have  
22 had regular phone, email, and in-person communications to discuss settlement terms, and have  
23 exchanged multiple drafts of the settlement agreement after getting input from client  
24 constituents. Kim. Decl. ¶¶ 10-11. Furthermore, Plaintiffs’ Counsel refused to negotiate  
25 attorneys’ fees and costs until agreement was reached on the remainder of the settlement. Kim  
26 Decl. ¶ 14. As such, settlement has been reached after extensive, good-faith, informed  
27 negotiations and the Court should find that this Rule 23(e)(2) factor weighs in favor of approval.  
28



3. The Agreement Will Provide Substantial Relief to Plaintiffs and the Class

The third factor requires courts to consider whether “the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims, (iii) the terms of any proposed award of attorney’s fees, including any timing of payments; and (iv) any agreement required to be identified under Rule 23(e)(3).” In determining whether the Settlement “falls within the range of possible approval,” the Court must focus on “substantive fairness and adequacy” and “consider plaintiffs’ expected recovery balanced against the value of the settlement offer.” *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080 (citations omitted). “It is well-settled law that a proposed settlement may be acceptable even though it amounts only to a fraction of the potential recovery that might be available to class members at trial.” *Uschold v. NSMG Shared Services, LLC*, 333 F.R.D. 157, 171 (N.D. Cal. 2019) (internal quotation and alterations omitted).

Here, the proposed Agreement provides that BART will undertake a program of renovating the most at-risk elevators and escalators in its system and implement a regular maintenance schedule to ensure that its existing facilities remain in good repair. The Agreement calls for BART to implement an emergency preparedness plan, improve outage communication and mitigation, continue a popular elevator attendant program, prioritize mitigation of soiled accessibility features, and provide for a complaint procedure regarding accessibility issues. BART will also regularly report outage data to the public and Plaintiffs’ Counsel. The Agreement provides for monitoring by Plaintiffs’ Counsel and a dispute resolution procedure for resolving any issues that arise during the settlement term. In sum, the Agreement comprehensively addresses measures to ensure that class members receive reliable access to BART’s transportation service, and allows for Plaintiffs’ Counsel to monitor implementation of the settlement and provide input from class members regarding ongoing issues. These changes will resolve the problems that led to the lawsuit.

**a. The potential costs, risks, and delays associated with litigation, trial and appeal weigh in favor of approval.**

In contrast, the risks, expense, and likely duration of protracted litigation in this case would be significant in the absence of a settlement. Plaintiffs would have to prevail on a contested motion for class certification, have summary judgment granted in their favor, win a fact-intensive case at trial, fight off any appeals, and even then may not achieve the extent of injunctive relief that the current Agreement contains. *See Curtis-Bauer v. Morgan Stanley & Co., Inc.*, No. C 06-3903 TEH, 2008 WL 4667090, at \*4 (N.D. Cal. Oct. 22, 2008) (“Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain, and substantial recovery for the Plaintiff class.”). Negotiations have already lasted six years, and litigation would likely take many more years and cost additional hundreds of thousands of dollars in fees and costs, all while class members would have to wait to get relief that is essential to their daily lives: access to the BART system. Kim Decl. ¶¶ 32-34. The threat of additional delays and costs is especially significant given delays already caused by the coronavirus pandemic.

Even if Plaintiffs were able to obtain greater relief after a trial on the merits, the inherent risks of litigation, and the protracted delays associated with trial and the inevitable appeals thereafter, weigh heavily in favor of the relief guaranteed to the class members by the proposed settlement on a much faster time frame. *See Nat’l Rural Telecomm’s Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.”) (quoting *Newberg on Class Actions*, § 11:50 at 155 (4th ed. 2002)).

**b. The terms of the Parties’ proposed attorneys’ fee award also weigh in favor of approval.**

The statutes at issue in this case allow prevailing plaintiffs to recover their reasonable fees and costs. *See* 42 U.S.C. § 12205 (ADA); Cal. Civ. Code § 52(a) (Unruh); 29 U.S.C. § 794a(b) (Section 504 of the Rehabilitation Act); Cal. Gov’t Code § 11139. “While attorneys’ fees and costs may be awarded in a certified class action where so authorized by law or the

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2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644

parties' agreement... courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). The "degree of success obtained" is "the most critical factor" to assessing the reasonableness of an attorney fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). This principle is "particularly important in complex civil rights litigation involving numerous challenges to institutional practices...[because] this type of litigation is lengthy and demands many hours of lawyers' services." *Id.* A plaintiff is a prevailing party when they obtain a successful settlement. *See Farrar v. Hobby*, 506 U.S. 103, 111 (1992). Here, Plaintiffs are entitled to recover their reasonably attorneys' fees and costs because they obtained a successful settlement.

Subject to this Court's approval, Defendants have agreed to pay Plaintiffs' Counsel \$825,000 to cover their fees and costs through the Court's final approval of the settlement. Kim Decl., Ex. 1 at ¶ 128. This amount is based on a lodestar of \$1,161,331. Kim Decl. ¶ 20. This amount was negotiated with the assistance of the Court after all the substantive injunctive relief terms had been resolved. Kim Decl. ¶¶ 14, 21. *See Manual for Complex Litigation* (Fourth) 21.7 at 335 (2004) (separate negotiation of the class settlement before an agreement on fees is generally preferable).

Accordingly, the Court should preliminarily approve Plaintiffs' Counsel's requested fees, costs and expenses. Plaintiffs will provide further detail regarding the requested award in the motion for fees, costs and expenses pursuant to F.R.C.P. 23(h).

#### 4. The Parties' Agreement Treats All Class Members Equitably

"The Court must next examine whether the Settlement Agreement provides preferential treatment to any class member." *Uschold*, 333 F.R.D. at 170 (internal quotation and citation omitted). Under the Parties' proposed settlement, every class member, including Plaintiffs, will benefit from exactly the same injunctive relief. The only difference in recovery between the Plaintiffs and other class members is a service award in the amount of \$7,500 each for the individual Plaintiffs and \$15,000 each for the organizational plaintiffs.

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Here, Plaintiffs Ian Smith and Pi Ra and representatives of organizational plaintiffs Senior and Disability Action and Independent Living Resource Center of San Francisco have demonstrated a serious commitment to their roles as class representatives by attending settlement conferences, meeting with attorneys, gathering and assessing documents, answering questions regarding their experiences with BART and about the litigation, and evaluating drafts of the proposed settlement agreement. Kim Decl. ¶¶ 10, 16-18; Traynor Decl. ¶¶ 9-10; Nieves ¶¶ 7-8; Ra Decl. ¶¶ 10, 12; Smith Decl. ¶¶ 2, 6-7, 10.

District courts must evaluate proposed incentive awards individually, using relevant factors that include “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, ... [and] the amount of time and effort the plaintiff expended in pursuing the litigation.” *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). “Such awards are discretionary ... and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (citation omitted). The factors court use in determining whether to authorize a service award include: “‘1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representatives; 4) the duration of the litigation[;] and 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.’” *Weeks v. Kellogg Co.*, 2013 WL 6531177, at \*35 (C.D. Cal. June 10, 2015) (quoting *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)).

The service awards are intended to compensate the named Plaintiffs for the important role they played for the benefit of the class, and the time, effort and risks they undertook to secure the result obtained on behalf of the class. In agreeing to serve as class representatives, they accepted the responsibility of representing the interests of all class members. Kim Decl. ¶ 18; Traynor Decl. ¶ 7; Nieves ¶ 5; Ra Decl. ¶ 6; Smith Decl. ¶ 5.

1 They provided information during lengthy interviews, assisted in preparing and  
 2 evaluating the case for settlement, and provided important feedback in the settlement process  
 3 itself. Kim Decl. ¶¶ 10, 16-18; Traynor Decl. ¶¶ 9-10; Nieves ¶¶ 7-8; Ra Decl. ¶¶ 6, 10-12;  
 4 Smith Decl. ¶¶ 2, 6-7.

5 **C. The Parties' Proposed Form of Notice Should be Approved**

6 Rule 23(e) of the Federal Rules of Civil Procedure provides that “notice of the proposed  
 7 dismissal or compromise shall be given to all members of the class in a manner that the court  
 8 directs.” Due process requires that interested parties be provided with notice reasonably  
 9 calculated under the circumstances to apprise them of the pendency of the action and afford them  
 10 an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 330  
 11 U.S. 306, 314 (1950). Notice is satisfactory if it “generally describes the terms of the settlement  
 12 in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and  
 13 be heard.” *Lane*, 696 F.3d at 826 (alteration in original) (quoting *Rodriguez v. W. Publ'g Corp.*,  
 14 563 F.3d at 962). The Parties' proposed notice meets this standard and complies with the  
 15 Northern District's Procedural Guidelines for Class Action Settlements.

16 The notice standard is easily satisfied here. The notice itself contains contact information  
 17 for class counsel, a website address that will link to the settlement agreement, instructions for  
 18 how to access the case docket through PACER or by visiting the office of the Clerk of the Court.  
 19 Kim Decl., Ex. 1 at Exhibit B. The notice also includes the date of the final approval hearing,  
 20 states that the hearing date is subject to change without further notice, and instructs class  
 21 members on how to get updated on changes to the hearing date. *Id.* The notice also explains the  
 22 terms and form of any objections that class members may have. *Id.*

23 The Parties have agreed on a notice distribution plan that will effectively inform class  
 24 members about the settlement and their right to object. Within 30 days of an order preliminarily  
 25 approving the settlement (“Order”), Defendants will post a one-page shortform of the notice for  
 26 four (4) consecutive weeks in the *San Francisco Chronicle*, the *San Francisco Examiner*, and the  
 27 *Oakland Tribune* in English; *Sing Tao Daily* in Chinese; and *El Observador* in Spanish. Kim  
 28

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2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644

Decl., Ex. 1 at ¶ 14(a). Within 20 days of an Order, Defendants will post the notice on its own website ([www.bart.gov](http://www.bart.gov)) in English, Chinese, and Spanish. *Id.* at ¶ 14(b). These notices will comply with Web Content Accessibility Guidelines. *Id.* Defendants will also post a link to the notice through email alerts, BART's Facebook page ([www.facebook.com/bartsf](http://www.facebook.com/bartsf)) and BART's Twitter account ([www.twitter.com/sfbart](http://www.twitter.com/sfbart)) in this time frame. *Id.* at ¶ 14(c). Within 20 days of an Order, Class Counsel will post on their websites a copy of the notice in English, Chinese, and Spanish. *Id.* at ¶ 14(e). These notices will also comply with Web Content Accessibility Guidelines. *Id.* Within 10 days of an Order, Defendants will provide a copy of the notice to the organizations listed in Exhibit C to the Settlement Agreement. *Id.* at ¶ 14(d). The Parties' proposed distribution plan takes into account the breadth and magnitude of the class. Distribution of the notice through publication in multiple local newspapers and posting on multiple accessible websites, coupled with providing notice to organizations that serve individual class members, will ensure that the notice reaches the maximum number of class members in the most efficient and cost-effective manner.

The Notice and proposed notice process satisfies Rule 23(c) because it fairly apprises class members of the settlement and their options with respect thereto, and fully satisfies due process requirements for a Rule 23(b)(2) settlement class with no opt out rights. This Court should approve the proposed notice and direct that it be distributed.

## V. CONCLUSION

The settlement of this litigation achieves important benefits for Plaintiffs and all members of the proposed Settlement Class. The Parties respectfully request that the Court enter the proposed order preliminarily approving the Agreement, preliminarily certifying the proposed class, and approving the proposed notice form and notice plan.

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1 DATED: October 20, 2023

Respectfully Submitted,

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3 DISABILITY RIGHTS ADVOCATES

4 /s/ Jinny Kim

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Jinny Kim  
Attorneys for Plaintiffs

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7  
8 GLYNN, FINLEY, MORTL, HANLON &  
FRIEDENBERG, LLP

9  
10 /s/ Jonathan Eldredge

11 \_\_\_\_\_  
Jonathan Eldredge  
Attorneys for Defendants

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14 **FILERS ATTESTATION**

15 Pursuant to Civil Local Rule 5-1(h)(3), I, Jinny Kim, attest that concurrence in the filing  
16 of this document has been obtained from the signatory.

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18 /s/ Jinny Kim

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Jinny Kim

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DISABILITY RIGHTS ADVOCATES  
2001 CENTER STREET, FOURTH FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644